

BEFORE THE IOWA DENTAL BOARD

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IN THE MATTER OF :	)	
	)	
ANDRE Q. BELL, D.D.S.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
License #7621	)	DECISION AND ORDER
	)	
RESPONDENT	)	

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TO: ANDRE Q. BELL, D.D.S.

This matter came on for a reinstatement hearing before the Iowa Dental Board (Board) on August 1, 2013 at 2:30 p.m. in the conference room at the Board's office at 400 SW 8th Street, Ste. D, Des Moines, Iowa. The following members of the Board were present for the hearing: Steven P. Bradley, D.D.S., Chairperson; Steven C. Fuller, D.D.S.; Thomas J. Jeneary, D.D.S.; Matthew J. McCullough, D.D.S.; Kaaren G. Vargas, D.D.S.; Mary C. Kelly, R.D.H.; Nancy A. Slach, R.D.H.; Lori Elmitt and Diane Meier, public members. Respondent appeared and was represented by attorney Jeffrey Boehlert. The state of Iowa was represented by Sara Scott, Assistant Attorney General. The hearing was open to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1) and 650 IAC 51.20(13). The testimony was recorded by a certified court reporter.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013), to deliberate their decision. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing and was directed to prepare this order of the Board, in accordance with their deliberations.

THE RECORD

The record includes the Notice of Hearing; testimony of the witnesses; State Exhibits 1-17 and Respondent Exhibits A-C. A protective order was issued for State Exhibit 16, which is a confidential patient record under Iowa Code section 22.7.

## FINDINGS OF FACT

1. On November 2, 1992, Respondent was issued license number 7621 by the Board to engage in the practice of dentistry, subject to the laws of the state of Iowa and the rules of the Board. Respondent had practiced dentistry in the state of Kansas for approximately ten years before moving to Iowa. Respondent practiced dentistry in Knoxville, Iowa from January 1994 to May 2007. (State Exhibit 8; State Exhibit 14, p. 88; Testimony of Respondent)

2. On April 17, 2003, the Board found probable cause to file a Statement of Charges against Respondent, charging him with willful or repeated violations of Board rule by failing to maintain records in a manner consistent with the protection of the welfare of the patient (Count I); obtaining a fee by fraud or misrepresentation (Count II); and unprofessional conduct (Count III). The Statement of Charges alleged, in part, that 23 of Respondent's patient records were reviewed by a Board consultant and found to be below the standard of care for record keeping practices. It further alleged that at least 12 of the records reflected unethical billing practices. (State Exhibit 1)

On September 15, 2003, Respondent and the Board entered into a Stipulation and Consent Order to resolve the Statement of Charges. Pursuant to the Stipulation and Consent Order, Respondent's dental license was placed on probation for a period of two years, subject to conditions and monitoring related to Respondent's billing and record keeping practices. (State Exhibit 2)

3. On October 15, 2004, the Board found probable cause to file a second Statement of Charges against Respondent, charging him with willful or repeated violations of Board rules by failing to maintain records in a manner consistent with the welfare of the patient (Count I) and failing to comply with a decision of the Board imposing licensee discipline (Count II). (State Exhibit 3)

On January 14, 2005, Respondent and the Board entered into a second Stipulation and Consent Order to resolve the pending Statement of Charges. Respondent was issued a Citation and Warning and his probation was extended to September 16, 2006. (State Exhibit 4)

4. On October 25, 2006, the Board issued a third Statement of Charges. Respondent was charged with obtaining a fee by fraud or misrepresentation, failure to maintain a satisfactory standard of competency in dentistry, and failing to comply with standard precautions for preventing and controlling infectious diseases. The Statement of Charges was later amended to add two additional counts: unprofessional conduct and inability to practice dentistry with reasonable skill and safety by reason of illness, or as a result of a physical or mental condition. These additional counts were based on letters sent by Respondent that were alleged to be threatening in nature. (State Exhibits 5-7)

There was an evidentiary hearing on the third Statement of Charges, and the Board issued its Decision and Order on May 10, 2007. With respect to the first four counts, the Board concluded that Respondent:

- Inappropriately submitted a claim to an insurance company with an incorrect/altered date of service and accepted third party payment for a service as payment in full without disclosing to the third party payer that he would not be collecting the patient's payment portion;
- Repeatedly failed to properly cement crowns, diagnose decay, and provide proper restorations;
- Failed to comply with standard precautions when he cut himself on a drill and drew blood while treating a patient, but he did not stop the procedure to wash and treat his injury and disinfect the instruments and affected area; and
- Engaged in unprofessional conduct when he wrote threatening and harassing letters to the Board's investigator and to the assistant attorney general representing the state in his disciplinary proceeding.

With respect to the fifth count, the Board determined that Respondent's letters and a psychiatrist's review of those letters provided probable cause to order a physical and mental evaluation of Respondent, pursuant to Iowa Code section 272C.9(1). The Board indefinitely suspended Respondent's dental license as its sanction for these violations. The Board stipulated that prior to requesting reinstatement of his license, Respondent was required to:

- A. Complete a comprehensive physical, psychological, and psychiatric evaluation at a facility approved by the Board and comply with any recommendations of the treating facility; and

- B. Complete a comprehensive clinical assessment at a college of dentistry, prior approved by the Board, to determine his level of competency.

The Board's Decision and Order did not set any specific time limits and provided that Respondent could apply for reinstatement upon completion of these requirements. The Decision and Order further stated that upon a determination that Respondent is safe to return to practice, his dental license would be reinstated subject to terms of probation, including but not limited to monitoring for billing practices and patient care. (State Exhibit 8)

5. Over the next several years, Respondent filed various state and federal appeals and pro se petitions concerning the Board's May 10, 2007 disciplinary action against his license. None of these appeals or petitions was successful. (State Exhibits 9-13)

Respondent has not worked as a dentist since May 2007. Respondent and his family members testified that they are currently living in Livingston, Montana, where Respondent is unemployed. Respondent and his family opened a restaurant in Livingston in October 2010, but the restaurant was unsuccessful and it closed in February 2012. The family has exhausted its financial resources during Respondent's periods of unemployment. (Testimony of Respondent; Charlene Bell; Ryan Bell; Jared Bell)

6. On October 8-9, 2012, Respondent submitted to a comprehensive psychiatric evaluation, substance abuse assessment, and vocational assessment at the Board approved Professionals Program at Elmhurst Memorial Healthcare in Elmhurst, Illinois. On October 23, 2012, the evaluators issued a written report and concluded that Respondent did not meet the criteria for any Axis I psychiatric or substance abuse disorder. The evaluators noted that Respondent had some situational anxiety related to his financial difficulties and concerns about being able to return to the practice of dentistry, but this was not indicative of an anxiety disorder. Respondent also has some interpersonal difficulties that did not rise to the level of a personality disorder. The evaluators recommended that Respondent should be restricted to working within an institution or group, which will provide accountability and relieve him of the stress inherent in solo practice, should the Board decide to reinstate his license. The evaluators also recommended monitoring of Respondent's practice by the Board and by a clinical practice monitor, who is a licensed Iowa dentist. (State Exhibit 16; Testimony of Respondent)

7. During the week of October 15-19, 2012, Respondent submitted to a comprehensive clinical review of his dental knowledge and skills at the Creighton University School of Dentistry. Five licensed dentists conducted the review, which covered the following areas of dental practice:

- procedures for the clinical examination of patients;
- evaluation of radiographs;
- formulation of treatment plans;
- principles of informed consent;
- record documentation and charting;
- evaluation of medical histories;
- use of antibiotics including recommendations for antibiotic prophylaxis;
- clinical procedures for preparation and placement of direct restorations;
- clinical procedures for indirect restorations;
- removable partial denture design and prescriptions;
- complete dentures;
- impression materials and impression making techniques;
- selection and manipulation of restorative materials;
- pulpal protection-use of sealers, liners, bases;
- vital pulp therapy-indirect and direct pulp capping;
- assessment of and treatment of post-treatment complications;
- simple endodontic procedures; and
- periodontal disease, evaluation, and documentation.

The evaluators concluded that it was possible for Respondent to return to the practice of dentistry, with some "caveats" based on his five year absence from dental practice. The evaluators recommended that Respondent should be employed in a practice situation where he has a peer/mentor support system. The evaluators mentioned six months as an appropriate length of time for the peer/mentor support system but acknowledged that the timeframe would be at the Board's discretion. (State Exhibit 17; Testimony of Respondent)

8. On December 3, 2012, Respondent submitted a reinstatement request to the Board. If his license is reinstated, Respondent is interested in providing dental services to persons with limited financial means, possibly through the Veterans Administration (VA) or the Indian Health Service (IHS). Representatives from the VA and HHS have told Respondent that his license must be "unrestricted" to qualify for employment as a dentist with their organizations. Respondent is asking the Board to reinstate his license

without restrictions or probationary conditions. (Testimony of Respondent; State Exhibit 14; Respondent Exhibit B)

9. Respondent submitted verification of 135 hours of continuing dental education that he had completed by November 24, 2012. This included 89 credits of on-line continuing education. (State Exhibit 14, p. 98; Testimony of Respondent)

10. Respondent submitted a number of positive patient experience surveys from his dental practice in Knoxville as well as letters of support from many former patients. (Respondent Exhibits A, B; Testimony of Respondent)

11. At hearing, Respondent apologized for the inappropriate letters that he sent to the Board's investigator and to the assistant attorney general in 2007. Respondent was self-represented at that time. He testified that the author of the letters was a person that he found over the internet who told him that he could fight the Board's charges and win. Respondent acknowledged that he did read the letters prior to signing and sending them. Respondent told the Board that he is remorseful for his actions in sending the letters. (Testimony of Respondent)

#### CONCLUSIONS OF LAW

650 IAC 51.34 provides the procedure for the reinstatement of a dental license that has been revoked or suspended by the Board. It provides, in relevant part:

**51.34(1)** Any person whose license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

**51.34(2)** If the order of revocation or suspension did not establish terms upon which reinstatement might occur,...an initial application for reinstatement may not be made until one year has elapsed from the date of the final order.

**51.34(3)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other disciplinary matters before the board.

51.34(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish these facts shall be on the respondent.

...  
51.34(6) The order to grant or deny reinstatement shall include findings of facts and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 650-51.33(153).

The Board did not set any specific length of time for the suspension of Respondent's license. Respondent could have started the reinstatement process years ago by complying with the Board's Decision and Order that indefinitely suspended his license. It has now been more than six years since Respondent last practiced dentistry. In making this reinstatement decision, the Board must consider this fact along with the considerations that led to the license suspension.

The preponderance of the evidence established that Respondent has now complied with prerequisites to reinstatement established in the Board's May 10, 2007 Decision and Order. Respondent has completed the comprehensive physical, psychological, and psychiatric evaluation and the comprehensive clinical assessment of his dental skills. Both sets of evaluators agreed that Respondent could safely return to the practice of dentistry, subject to monitoring. The Board gives significant weight to the recommendations made by Board approved evaluators. In addition, the Board's May 10, 2007 Decision and Order stated that if Respondent was determined to be safe to return to practice, his dental license would be reinstated subject to terms of probation that included but were not limited to monitoring for billing practices and patient care.

The standard of care for the practice of dentistry is the same regardless of the population being served, and the Board's reinstatement decision must be consistent with the public's interest in safe, competent, and ethical dentistry. Probationary conditions, including monitoring and reporting, are essential given the disciplinary history leading to Respondent's license suspension and the number of years that Respondent has been away from the practice of dentistry. The Board understands that Respondent is concerned about his ability to find employment as a dentist if his license

is placed on probation. Many dentists, however, have been able to continue or resume the practice of dentistry despite having conditions of probation placed on their licenses.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa dental license number 7621, issued to Andre Bell, D.D.S., shall be REINSTATED and shall immediately be placed on PROBATION for a period of five (5) years, subject to the following terms of probation:


- A. Respondent shall be limited to practicing dentistry in a group or institutional setting with at least one other licensed dentist.
- B. Prior to returning to the practice of dentistry, Respondent shall enter into a written agreement with another licensed dentist, who will serve as Respondent's Practice Monitor. Respondent must submit the name of the Practice Monitor and a copy of the written monitoring agreement to the Board for its approval. At a minimum, the agreement shall provide for the Practice Monitor to regularly meet with Respondent to review Respondent's care of patients and his billing practices. The practice monitor shall provide quarterly written reports to the Board no later than the first day of January, April, July and October of each calendar year of Respondent's probation.
- C. Respondent shall submit his own quarterly written reports on the form provided by the Board no later than the first day of January, April, July and October of each calendar year of his probation. The reports shall include current information about Respondent's dental practice and shall detail Respondent's compliance with all of the terms of this Order.
- D. Respondent shall provide notification to all employers of the terms of probation imposed by this Reinstatement Order. The employer(s) shall provide written verification to the Board that they have read and understood the terms of probation.
- E. Respondent shall be responsible for all costs associated with compliance with this Order.



F. Respondent shall upon reasonable notice, and subject to the provisions of 650 Iowa Administrative Code 31.6 appear before the Board at the time and place designated by the Board.

G. Periods of residence or practice outside of the state of Iowa shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board. Periods in which Respondent does not practice dentistry and/or fails to comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

Dated this 13<sup>th</sup> day of September, 2013.

  
Steven Bradley, D.D.S.  
Chairperson  
Iowa Dental Board

cc: Sara Scott, Office of the Attorney General, Hoover Building, Des Moines, Iowa 50319 [LOCAL]

Jeffery Boehlert, Patterson Law Firm, LLP, 505 Fifth Avenue, Suite 729, Des Moines, IA 50309-2390 [CERTIFIED]

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A and Iowa Code section 153.33.